

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Wail Refai et al.	Group Art Unit: 2667
Serial No.: 09/754,490	Examiner: Blanche Wong
Filed: January 4, 2001	Confirmation No.: 2897
Title: SYSTEMS AND METHODS FOR SOFT HANDOFF AND OTHER DIVERSITY COMMUNICATION USING BASE STATIONS SUPPORTING COMMON RADIO CONFIGURATIONS	

Date: August 18, 2006

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Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed May 22, 2006.

It is not believed that an extension of time and/or additional fee(s) are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned under 37 C.F.R. Sec. 1.136(a). Any additional fees believed to be due may be charged to Deposit Account No. 50-0220.

Real Party In Interest

The real party in interest is assignee Ericsson Inc., Plano TX.

Related Appeals and Interferences

Appellants are aware of no appeals or interferences that would be affected by the present appeal.

Status of Claims

The claims stand more than twice rejected in the Office Action mailed January 25, 2005 (herein after "First Action"), the Office Action mailed September 6, 2005 (hereinafter

"Second Action"), and the Office Action mailed December 20, 2005 (hereinafter "Third Action"). Claims 1-3, 5-18, and 20-44 are pending in this application. Claims 1-3, 5, 7-9, 13-18, 20, 23-26, 29, 30, 32, 35-39, and 40-43 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,567,666 to Czaja et al. (hereinafter "Czaja"). *See Third Action*, p. 3. Claim 6 and 21 stand rejected under 35 U.S.C. § 103 as obvious over Czaja in view of U.S. Patent No. 6,253,085 to Bender (hereinafter "Bender"). *See Third Action*, p. 8. Claims 10-12, 27, 28, 31, 33 and 34 stand rejected under 35 U.S.C. § 103 as obvious over Czaja in view of U.S. Patent No. 6,611,507 to Hottinen et al. (hereinafter "Hottinen"). *See Third Action*, p. 9. Claims 22 and 44 stand rejected under 35 U.S.C. § 103 as obvious of Czaja in view of U.S. Patent No. 5,926,470 to Tiedemann, Jr. (hereinafter "Tiedemann"). *See Third Action*, p. 11. Claims 24-31 and 40-44 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. *See Third Action*, p. 2. Appellants appeal the rejections of the claims as presented in the Amendment filed May 22, 2006.

Status of Amendments

Appellants' Amendments of September 23, 2004 and April 21, 2005 have been entered. Responsive to the Final Action, the Amendment filed May 22, 2006 amended Claims 2, 15 25, 37 and 41 to correct clearly apparent typographical errors, and thus place the claims in better form for consideration upon appeal. The attached Appendix A presents the pending claims as amended in the Amendment filed May 22, 2006.

Summary of Claimed Subject Matter

According to independent Claim 1, communications are conducted communicating between a wireless terminal and a first node according to a first radio configuration of a first set of radio configurations supported by the first node. A second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations is identified. Simultaneous communications occur between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code. *See, e.g.*, FIG. 3; Specification, p. 9, line 23, through p. 10, line 16.

For example, in some embodiments, a terminal communicating with an IS-2000-compliant base station may identify an IS-95 compliant base station. Communications between the terminal and the IS-2000 compliant base station may be transitioned to a radio configuration, such that simultaneous communications with the IS-2000-compliant base station and the IS-95-compliant base station using a common channel coding including common spreading code may be supported. *See, e.g.*, FIG. 4; Specification, p. 10, line 17 through p. 11, line 5.

Independent Claims 24, 32 and 36 are apparatus analogs of independent Claim 1.

Regarding Claim 36, means are provided for communicating between a wireless terminal and a first node according to a first radio configuration of a first set of radio configurations supported by the first node. *See, e.g.*, FIG. 1, transceiver 114 and description thereof at pp. 7 and 8 and/or FIG. 2, transceiver 270 and description thereof at pp. 8 and 9. Means are provided for identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations. *See, e.g.*, FIG. 1, radio configuration control circuit 122 and description thereof at pp. 7 and 8 and/or radio configuration control circuit 262 and description thereof at pp. 8 and 9. The apparatus further include means, responsive to the means for identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations, for simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code. *See, e.g.*, FIG. 1, transceiver 114 and radio configuration control circuit 122 and description thereof at pp. 7 and 8 and/or FIG. 2, transceiver 270 and radio configuration control circuit 262 and description thereof at pp. 8 and 9.

Independent Claim 14 recites a method of performing handoff of a wireless terminal from a first base station supporting a first set of radio configurations to a second base station supporting a second set of radio configurations that is different than the first set of radio configurations. The method includes determining whether a common radio configuration having a common channel coding including a common spreading code is available for the first and second base stations, and handing off the wireless terminal from the first base station to the second base station based on the determination of whether a common radio configuration is available for the first and second base stations. For example, if it is

determined that the common radio configuration is available, the terminal may communicate simultaneously with the first and second base stations using the common radio configuration having a common channel coding including a common spreading code. If not, a hard handoff procedure may be used. *See, e.g.*, FIGs. 5 and 6; Specification, p. 11, line 6 through p. 12, line 6. Independent Claim 40 is an apparatus analog of independent Claim 14.

Regarding Claim 40, A system includes means for determining whether a common radio configuration having a common channel coding including a common spreading code is available for first and second base stations, the first base station supporting a first set of radio configurations and the second base station supporting a second set of radio configurations that is different than the first set of radio configurations. The system further includes means, responsive to the means for determining whether a common radio configuration having a common channel coding including a common spreading code is available for first and second base stations, for handing off the wireless terminal from the first base station to the second base station based on a determination of whether a common radio configuration is available for the first and second base stations. *See, e.g.*, FIG. 1, transceiver 114 and radio configuration control circuit 122 and description thereof at pp. 7 and 8 and/or FIG. 2, transceiver 270 and radio configuration control circuit 262 and description thereof at pp. 8 and 9.

Grounds of Rejection To Be Reviewed on Appeal

Claims 1-3, 5, 7-9, 13-18, 20, 23-26, 29, 30, 32, 35-39, and 40-43, including independent Claims 1, 14, 24, 32, 36 and 40, stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,567,666 to Czaja et al. (hereinafter "Czaja"). *See Third Action*, p. 3. Claim 6 and 21 stand rejected under 35 U.S.C. § 103 as obvious over Czaja in view of U.S. Patent No. 6,253,085 to Bender (hereinafter "Bender"). *See Third Action*, p. 8. Claims 10-12, 27, 28, 31, 33 and 34 stand rejected under 35 U.S.C. § 103 as obvious over Czaja in view of U.S. Patent No. 6,611,507 to Hottinen et al. (hereinafter "Hottinen"). *See Third Action*, p. 9. Claims 22 and 44 stand rejected under 35 U.S.C. § 103 as obvious of Czaja in view of U.S. Patent No. 5,926,470 to Tiedemann, Jr. (hereinafter "Tiedemann"). *See Third Action*, p. 11. Claims 24-31 and 40-44 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. *See Third Action*, p. 2

Arguments

I. Introduction

Some of the pending claims are rejected as anticipated under 35 U.S.C. § 102(e). Under 35 U.S.C. § 102, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (quoting *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). "Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." *Apple Computer Inc. v. Articulate Sys. Inc.*, 57 U.S.P.Q.2d 1057, 1061 (Fed. Cir. 2000). A finding of anticipation further requires that there must be no difference between the claimed invention and the disclosure of the cited reference as viewed by one of ordinary skill in the art. *See Scripps Clinic & Research Foundation v. Genentech Inc.*, 18 U.S.P.Q.2d 1001 (Fed. Cir. 1991). In particular, the Court of Appeals for the Federal Circuit held that a finding of anticipation requires absolute identity for each and every element set forth in the claimed invention. *See Trintec Indus. Inc. v. Top-U.S.A. Corp.*, 63 U.S.P.Q.2d 1597 (Fed. Cir. 2002). Additionally, the cited prior art reference must be enabling, thereby placing the allegedly disclosed matter in the possession of the public. *In re Brown*, 329 F.2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Thus, the prior art reference must adequately describe the claimed invention so that a person of ordinary skill in the art could make and use the invention.

Further ones of the pending claims are rejected as obvious under 35 U.S.C. § 103. To establish a prima facie case of obviousness, the prior art reference or references when combined must teach or suggest *all* the recitations of the claims, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. §2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. §2143.01, citing *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). As emphasized by the Court of Appeals for the Federal Circuit, to support combining references, evidence of a suggestion, teaching, or motivation to combine must be clear and particular, and this requirement for clear and particular evidence is not met by broad

and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Court of Appeals for the Federal Circuit has further stated that, to support combining or modifying references, there must be particular evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

II. Independent Claims 1, 14, 24, 32, 36 and 40 are patentable over Czaja

Claim 1 recites:

A method of communicating with a wireless terminal, the method comprising:
communicating between the wireless terminal and a first node according to a first radio configuration of a first set of radio configurations supported by the first node;
identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations; and
simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code.

Thus, according to Claim 1, both the first and second nodes communicate with the terminal according to the identified second radio configuration and common channel coding.

In rejecting Claim 1 as anticipated by Czaja, the Third Action cites handoff procedures described at column 2, lines 44-46 and 54-59 of Czaja as teaching "simultaneously communication . . . between the wireless terminal (the mobile station) and respective ones of the first and second nodes according to the identified second radio configuration (3G), using a common channel coding including a common spreading code (It is inherent that in order for the mobile station and base stations to communicate, same data coding and error correction scheme are used." Third Action, p. 4. This interpretation appears to be odds with what is actually described in Czaja.

In particular, in each of the handoff scenarios described in Czaja, fingers of a RAKE receiver are "split" into two groups that receive disparately modulated signals. In the first embodiment described in columns 4 and 5, the "mobile station assigns one or more demodulating fingers to the "other generation" base station signal, and it demodulates and

decodes the information independently from the current assignment." Czaja, column 5, lines 44-47. In the second embodiment described at columns 6 and 7, when "performing a true SHO [soft handoff], the mobile station assigns one or more of its fingers to demodulate the IS-95 A/B base station signal and the remaining fingers to the IS-2000 base station." Czaja, column 6, lines 37-40. In each of these scenarios, different spread spectrum demodulation is used in the respective sets of fingers. Thus, it appears that neither of these embodiments teaches or suggests "simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code," as recited in Claim 1. Moreover, the description of the two embodiments in Czaja directly contradicts the Third Action's assertion that "it is inherent that in order for the mobile station and base stations to communicate, same data coding and error correction scheme are used," as Czaja describes using different coding (IS-95 vs. IS-2000) in the respective sets of receiver fingers.

Accordingly, Appellants submit that Czaja does not provide the teachings alleged in the Third Action. For at least these reasons, Appellants submit that the rejection of Claim 1 based on Czaja is erroneous.

Appellants further submit that the rejections of independent Claims 14, 24, 32, 36 and 40 based on Czaja are clearly erroneous for at least similar reasons. In particular, Claim 14 recites "determining whether *a common radio configuration having a common channel coding including a common spreading code* is available for the first and second base stations," Claim 24 recites "a radio configuration control circuit operative to identify a common radio configuration of the first set of radio configurations that is also a member of a second set of radio configurations supported by a second node and to responsively cause the first and second nodes to *simultaneously communicate with the wireless terminal according to the identified common radio configuration using a common channel coding including a common spreading code*," Claim 32 recites "a radio configuration control circuit coupled to the transceiver circuit and operative to cause the transceiver circuit to communicate with a first node using first radio configuration of the set of radio configurations, to identify a second radio configuration of the set of radio configurations supported by a second node, and to responsively cause the transceiver circuit to *simultaneously communicate with respective ones of the first and second nodes according to the second radio configuration using a*

common channel coding including a common spreading code," Claim 36 recites "means . . . for *simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code,"* and Claim 40 recites "means for determining whether a common radio configuration having *a common channel coding including a common spreading code* is available for first and second base stations." As discussed above, Czaja does not disclose or suggest such recitations.

III. The dependent claims are patentable

Appellants submit that dependent Claims 2, 3, 5-13, 15-18, 19-23, 25-31, 33-35, 37-39, and 41-44 are patentable at least by virtue of the patentability of the respective ones of independent Claims 1, 14, 24, 32, 36 and 40 from which they depend.

IV. Claims 24-31 and 40-44 are not indefinite

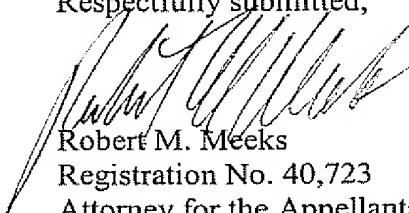
With respect to Claim 24, the Third Action states that "it is unclear whether - the identified common radio configuration using a common channel coding including a common spreading code - in ln. 7-9, is the same as - a common radio configuration - that is identified in ln. 4-5. Third Action, p. 3. Appellants note that the common radio configuration is identified in line 4, and is later referred to as "the identified common radio configuration." Therefore, Appellants submit that these recitations are not indefinite. Accordingly, Appellants submit that the § 112 rejection of Claim 24 is erroneous and should be reversed. Similar arguments apply to the first grounds for the § 112 rejection of Claim 40.

The second grounds for the § 112 rejection of Claim 40 is there allegedly is no antecedent basis for "'first and second base stations' in lines 3 and 4." Third Action, p. 3. Appellants submit that no antecedent basis is required for "first and second base stations" as recited at lines 3 and 4 because these elements are first introduced at lines 3 and 4. Accordingly, this basis for the § 112 rejection of Claim 40 is also erroneous and should be reversed.

IV. Conclusion

For at least the reasons discussed above, Appellants, therefore, request reversal of the rejections of all of the claims.

Respectfully submitted,

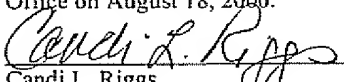


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CERTIFICATION OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to the U.S. Patent and Trademark Office on August 18, 2006.



Candi L. Riggs

Appendix A: Claims

1. (Rejected) A method of communicating with a wireless terminal, the method comprising:

communicating between the wireless terminal and a first node according to a first radio configuration of a first set of radio configurations supported by the first node;

identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations; and

simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code.

2. (Rejected) A method according to Claim 1, wherein a first one of the first and second sets of radio configurations is constrained to radio configurations that are compliant with a wireless communications standard, and wherein a second one of the first and second sets of radio configurations comprises radio configurations compliant with the wireless communications standard and radio configurations that are non-compliant with the wireless communications standard.

3. (Rejected) A method according to Claim 1, wherein a first one of the first and second sets of radio configurations is constrained to IS-95 compliant radio configurations, and wherein a second one of the first and second sets of radio configurations includes IS-2000 compliant radio configurations that are non-compliant with IS-95.

4. (Canceled)

5. (Rejected) A method according to Claim 1, wherein simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the second radio configuration further comprises:

receiving first and second signals transmitted from respective ones of the first and second nodes at the wireless terminal; and

processing the first and second signals according to a common process.

6. (Rejected) A method according to Claim 5:

wherein receiving first and second signals transmitted from respective ones of the first and second nodes at the wireless terminal comprises receiving a composite signal including the first and second signals; and

wherein processing the first and second signals according to a common process comprises processing the composite signal according to a RAKE process.

7. (Rejected) A method according to Claim 1, wherein the first and second radio configurations comprise code division multiple access (CDMA) radio configurations.

8. (Rejected) A method according to Claim 1, wherein the first node supports a first set of radio configurations and wherein the second node supports a second set of radio configurations that includes only a subset of first set of radio configurations.

9. (Rejected) A method according to Claim 1, wherein the first node supports a first set of radio configurations, wherein the second node supports a second set of radio configurations, and wherein the first set of radio configurations includes only a subset of the second set of radio configurations.

10. (Rejected) A method according to Claim 1, wherein identifying a second radio configuration available for a second node is proceeded by identifying the second node as a best candidate node according to a predetermined criterion.

11. (Rejected) A method according to Claim 1, wherein simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the second radio configuration is preceded by requesting communication according to the second radio configuration from the wireless terminal.

12. (Rejected) A method according to Claim 1, wherein simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration is preceded by commanding the wireless terminal to communicate according to the second radio configuration.

13. (Rejected) A method according to Claim 1, wherein simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration is followed by terminating communications between the wireless terminal and the first node while continuing communications between the wireless terminal and the second node.

14. (Rejected) A method of performing handoff of a wireless terminal from a first base station supporting a first set of radio configurations to a second base station supporting a second set of radio configurations that is different than the first set of radio configurations, the method comprising:

determining whether a common radio configuration having a common channel coding including a common spreading code is available for the first and second base stations; and

handing off the wireless terminal from the first base station to the second base station based on the determination of whether a common radio configuration is available for the first and second base stations.

15. (Rejected) A method according to Claim 14, wherein a first one of the first and second sets of radio configurations is constrained to radio configurations that are compliant with a wireless communications standard, and wherein a second one of the first and second sets of radio configurations comprises radio configurations that are compliant with the wireless communications standard and radio configurations that are non-compliant with the wireless communications standard.

16. (Rejected) A method according to Claim 14, wherein a first one of the first and second sets of radio configurations is constrained to IS-95 compliant radio configurations, and wherein a second one of the first and second sets of radio configurations includes IS-2000 compliant radio configurations that are non-compliant with IS-95.

17. (Rejected) A method according to Claim 14, wherein handing off the wireless terminal from the first base station to the second base station based on the determination of whether a common radio configuration is available for the first and second base stations comprises performing a soft handoff of the wireless terminal using the common radio configuration.

18. (Rejected) A method according to Claim 17, wherein performing a soft handoff of the wireless terminal using the common radio configuration comprises:
changing the radio configuration used for communications between the first base station and the wireless terminal to the common radio configuration; and then
communicating between the second base station and the wireless terminal according to the common radio configuration.

19. (Canceled)

20. (Rejected) A method according to Claim 14, wherein performing a soft handoff of the wireless terminal using the common radio configuration further comprises:
receiving first and second signals transmitted by respective ones of the first and second base stations at the wireless terminal; and
processing the first and second received signals according to a common process.

21. (Rejected) A method according to Claim 20:
wherein receiving first and second signals transmitted by respective ones of the first and second base stations at the wireless terminal comprises receiving a composite signal including the first and second signals; and
wherein processing the first and second received signals according to a common process comprises processing the composite signal according to a RAKE process.

22. (Rejected) A method according to Claim 14, wherein handing off the wireless terminal from the first base station to the second base station based on the determination of whether a common radio configuration is available for the first and second base stations

comprises performing a hard handoff from the first base station to the second base station if a common radio configuration is not available.

23. (Rejected) A method according to Claim 14, wherein the common radio configuration comprises a code division multiple access (CDMA) radio configuration.

24. (Rejected) A wireless communications system, comprising:
a first node operative to communicate with a wireless terminal according to any of a first set of radio configurations; and
a radio configuration control circuit operative to identify a common radio configuration of the first set of radio configurations that is also a member of a second set of radio configurations supported by a second node and to responsively cause the first and second nodes to simultaneously communicate with the wireless terminal according to the identified common radio configuration using a common channel coding including a common spreading code.

25. (Rejected) A system according to Claim 24, wherein a first one of the first and second sets of radio configurations is constrained to radio configurations that are compliant with a wireless communications standard, and wherein a second one of the first and second sets of radio configurations comprises radio configurations that are compliant with the wireless communications standard and radio configurations that are non-compliant with the wireless communications standard.

26. (Rejected) A system according to Claim 24, wherein a first one of the first and second sets of radio configurations is constrained to IS-95 compliant radio configurations, and wherein a second one of the first and second sets of radio configurations includes IS-2000 compliant radio configurations that are non-compliant with IS-95.

27. (Rejected) A system according to Claim 24, wherein the radio configuration control circuit is operative to command the wireless terminal to communicate with the first and second nodes according to the identified common radio configuration responsive to identification of the common radio configuration.

28. (Rejected) A system according to Claim 24, wherein the radio configuration control circuit is operative to receive a request from the wireless terminal to communicate with the first base node according to the common radio configuration and to responsively cause the first node to change its communications with the wireless terminal to conform to the common radio configuration.

29. (Rejected) A system according to Claim 24, wherein the set of radio configurations comprises a set of code division multiple access (CDMA) radio configurations.

30. (Rejected) A system according to Claim 24, wherein the first node comprises a base station.

31. (Rejected) A system according to Claim 24, wherein the radio configuration control circuit is positioned at a mobile switching center.

32. (Rejected) A wireless terminal, comprising:
a transceiver circuit operative to communicate according to a set of radio configurations; and
a radio configuration control circuit coupled to the transceiver circuit and operative to cause the transceiver circuit to communicate with a first node using first radio configuration of the set of radio configurations, to identify a second radio configuration of the set of radio configurations supported by a second node, and to responsively cause the transceiver circuit to simultaneously communicate with respective ones of the first and second nodes according to the second radio configuration using a common channel coding including a common spreading code.

33. (Rejected) A terminal according to Claim 32, wherein the radio configuration control circuit is operative to cause the transceiver circuit to transmit a request to simultaneously communicate with the first and second nodes.

34. (Rejected) A terminal according to Claim 32, wherein the radio configuration control circuit is operative to cause the transceiver circuit to simultaneously communicate with the first and second nodes responsive to a command received by the transceiver circuit.

35. (Rejected) A terminal according to Claim 32, wherein the set of radio configurations comprises a set of code division multiple access (CDMA) radio configurations.

36. (Rejected) A system, comprising:
means for communicating between a wireless terminal and a first node according to a first radio configuration of a first set of radio configurations supported by the first node;
means for identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations; and
means, responsive to the means for identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations, for simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code.

37. (Rejected) A system according to Claim 36, wherein a first one of the first and second sets of radio configurations is constrained to radio configurations that are compliant with a wireless communications standard, and wherein a second one of the first and second sets of radio configurations comprises radio configurations compliant with the wireless communications standard and radio configurations that are non-compliant with the wireless communications standard.

38. (Rejected) A system according to Claim 37, wherein a first one of the first and second sets of radio configurations is constrained to IS-95 compliant radio configurations, and wherein a second one of the first and second sets of radio configurations includes IS-2000 compliant radio configurations that are non-compliant with IS-95.

39. (Rejected) A system according to Claim 37, wherein the first and second radio configurations comprise code division multiple access (CDMA) radio configurations.

40. (Rejected) A system, comprising:

means for determining whether a common radio configuration having a common channel coding including a common spreading code is available for first and second base stations, the first base station supporting a first set of radio configurations and the second base station supporting a second set of radio configurations that is different than the first set of radio configurations; and

means, responsive to the means for determining whether a common radio configuration having a common channel coding including a common spreading code is available for first and second base stations, for handing off the wireless terminal from the first base station to the second base station based on a determination of whether a common radio configuration is available for the first and second base stations.

41. (Rejected) A system according to Claim 40, wherein a first one of the first and second sets of radio configurations is constrained to radio configurations that are compliant with a wireless communications standard, and wherein a second one of the first and second sets of radio configurations comprises radio configurations that are compliant with the wireless communications standard and radio configurations that are non-compliant with the wireless communications standard.

42. (Rejected) A system according to Claim 40, wherein a first one of the first and second sets of radio configurations is constrained to IS-95 compliant radio configurations, and wherein a second one of the first and second sets of radio configurations includes IS-2000 compliant radio configurations that are non-compliant with IS-95.

43. (Rejected) A system according to Claim 40, wherein the means for handing off the wireless terminal from the first base station to the second base station based on a determination of whether a common radio configuration is available for the first and second base stations comprises means for performing a soft handoff of the wireless terminal using the common radio configuration.

44. (Rejected) A system according to Claim 40, wherein the means for handing off the wireless terminal from the first base station to the second base station based on a determination of whether a common radio configuration is available for the first and second base stations comprises means for performing a hard handoff from the first base station to the second base station if a common radio configuration is not available.

Appendix B: Evidence

No evidence pursuant to 37 C.F.R. Sec. 1.130, Sec. 1.131, or Sec. 1.132 is relied upon by Appellants in this Appeal.

Appendix C: Related Proceedings

There are no related proceedings pursuant to 37 C.F.R. Sec. 41.37.